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OFFICE OF PETITIONS

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| In re Application of | : | |
| Sweeney, et al. | : | |
| Application No. 10/607,818 | : | ON PETITION |
| Filed: June 27, 2003 | : | |
| Attorney Docket No. 279.636US1 | : | |

This is a decision on the petition under 37 C.F.R. 1.181, filed January 26, 2005 (certificate of transmission date December 6, 2004), to withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **GRANTED**.

This application was held abandoned for failure to respond in a timely manner to the Notice to File Missing Parts of Nonprovisional Application, mailed on September 23, 2003, which set forth an extendable 2 month period to submit various fees, an executed oath, and a surcharge. No extensions of time being obtained pursuant to 37 C.F.R. 1.136(a), the Office contended this application became abandoned on November 24, 2003 for failure to reply to the September 23, 2003 Notice. A Notice of Abandonment was mailed on October 18, 2004.

Petitioners assert that a check for \$2,024.00 to cover the large entity basic filing fee and additional claims fees, an executed declaration, and a check for the surcharge was mailed to the Office on November 21, 2003. The original response is not of record in the file and cannot be located. However, the copy of the itemized cover sheet previously mailed and re-submitted with the instant petition contains a proper certificate of mailing bearing a November 21, 2003 date of deposit.

Under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with

the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The itemized cover sheet bears a proper certificate of mailing, dated November 21, 2003, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. Attorney David W. Black asserts that a timely reply to the September 23, 2003 Notice was mailed on November 21, 2003.

The petition is **GRANTED**.

Since the checks mailed with the correspondence on November 21, 2003 cannot be located, deposit account no. 19-0743 will be charged the \$130.00 surcharge and the \$2,024 fees that were due on November 21, 2003.

The application file will be returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3230.

A handwritten signature in cursive script, reading "Shirene Willis Brantley".

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions